

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
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2005 FEB 24 P 4:00
U.S. DISTRICT COURT
DISTRICT OF MASS.

SAVINGS BANK EMPLOYEES
RETIREMENT ASSOCIATION,

Plaintiff,

v.

BERKSHIRE BANK

Defendants.

CIVIL ACTION
NO. 05-1-123-EFH

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

Defendant Berkshire Bank ("Berkshire"), hereby responds to the numbered paragraphs of plaintiff's ("SBERA's") Complaint as follows:

1. Admitted.
2. Admitted.
3. Defendant admits the first sentence of Paragraph 3. Defendant denies the last two sentences of Paragraph 3.
4. Defendant admits that it was aware of the resolution. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in the second sentence of Paragraph 4. Defendant denies the last sentence of Paragraph 4.
5. Defendant admits that it withdrew its 401(k) plan from SBERA on September 30, 2004. Defendant states however, that it still maintains its ESOP plan with SBERA.
6. Defendant admits SBERA has demanded fees as set forth in Paragraph 6.
7. Defendant admits that it has not paid the fees.

Count I

8. Defendant realleges and incorporates by reference as if fully set forth herein its responses to the allegations contained in Paragraphs 1 through 7.

9. Defendant denies the allegations set forth in Paragraph 9.

Count II


10. Defendant realleges and incorporate by reference as if fully set forth herein its responses to the allegations contained in Paragraphs 1 through 9.
11. Defendant admits that it withdrew from SBERA and denies the remaining allegations set forth in Paragraph 11.
12. Defendant denies the allegations set forth in Paragraph 12.

AFFIRMATIVE DEFENSES

1. Plaintiff's purported assessment violates applicable laws.
2. Plaintiff's purported assessment constitutes an impermissible penalty that does not reasonably estimate the potential damages resulting from defendants' withdrawal from the SBERA plan.
3. Plaintiff's claim for violation of Chapter 93A is improvidently pled.
4. Plaintiff's claims are barred, or limited by, the Employee Retirement Income Security Act (ERISA).

Respectfully submitted,

By its attorneys,


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Dated: February 24, 2005

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CERTIFICATION OF SERVICE
I hereby certify that a true copy of the above
document was served upon the attorney of record
for each other party by mail (by hand) on 2-24-05
